

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-13659
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT DECEMBER 14, 2005 THOMAS K. KAHN CLERK
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D. C. Docket Nos. 04-03461-CV-1-KOB & 04-03462-CV-1-K

1:04cv03461

THRESA LYNN WILLIAMS,

Plaintiff-Appellant,

versus

ALABAMA PUBLIC HEALTH DEPARTMENT,
RAVONDA STEPHENS,

Defendants-Appellees.

1:04cv03462

THRESA LYNN WILLIAMS,

Plaintiff-Appellant,

versus

ALABAMA MEDICAID AGENCY,
DEBORAH POE,
WENCY MCMEANS,
Agents for Alabama Medicaid Agency,

Defendants-Appellees.

**Appeal from the United States District Court
for the Northern District of Alabama**

(December 14, 2005)

Before ANDERSON, BIRCH and CARNES, Circuit Judges.

PER CURIAM:

On December 17, 2004, Thresa Lynn Williams filed a pro se complaint against the Alabama Public Health Department and Ravonda Stephens, alleging acts of harassment during her employment as an outstation medicaid eligibility specialist. The district court construed her complaint as a 42 U.S.C. § 1983 hostile work environment action. On May 27, 2005, the district court dismissed the complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Williams appeals from that order.¹

To establish a hostile work environment claim, Williams must show that:

1) she belongs to a protected group; (2) she has been subject to unwelcome harassment; (3) the harassment was based on a protected characteristic of the

¹ Williams also submitted a separate pro se complaint against the Alabama Medicaid Agency, Deborah Poe, and Wency McMeans. The district court treated this complaint together with the complaint against Alabama Public Health and Stephens. Williams only appeals the order of dismissal as to her complaint against Alabama Public Health and Stephens.

employee; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) the employer is responsible for the environment under either a theory of vicarious or direct liability. See Miller v. Kenworth of Dothan, Inc., 277 F.3d 1269, 1275 (11th Cir. 2002).

The district court had authority to dismiss Williams' case if it determined that her action was frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). A case is frivolous if the factual allegations are clearly baseless or if it is based on a "indisputably meritless legal theory." See Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 1833 (1989). We review the district's court dismissal of Williams' claim for frivolity only for an abuse of discretion. Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001).

The district court did not abuse its discretion in dismissing Williams' case as frivolous. Williams' allegations are insufficient to meet the third prong of a hostile work environment claim. She alleged that her co-workers' conduct was annoying and unprofessional but failed to allege that it was attributable to her membership in a protected category. For this reason, Williams does not have a legally cognizable hostile work environment claim under § 1983. Her claim is based on an indisputably meritless legal theory. Accordingly, the district court did

not abuse its discretion in dismissing Williams' claim as frivolous.

AFFIRMED.